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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DEANDRE MORROW,

Plaintiff,

Case No. 2:20-cv-02264-ART-EJY

v.

ORDER

CLARK COUNTY POLICE
DEPARTMENT; OFFICER
THOMPOSON, ID #606,

Defendants.

9 *Pro se* Plaintiff Deandre Morrow brings this 42 U.S.C. § 1983 action
 10 against Defendant Officer Thompson for alleged violations of Plaintiff's First
 11 and Fourteenth Amendment rights. (ECF No. 11.) The Court previously
 12 dismissed all other claims against other Defendants. (ECF Nos. 14, 15.) Now
 13 pending before the Court is Defendant Thompson's Motion for Summary
 14 Judgment on Plaintiff's First and Fourteenth Amendment claims. (ECF No. 33.)
 15 For the reasons stated, the Court grants Defendant's Motion.

16 **I. BACKGROUND**

17 The facts relevant to Defendant's Motion for Summary Judgment are
 18 taken from Plaintiff's Second Amended Complaint (ECF No. 11) and from
 19 exhibits submitted by both parties with their briefing on this Motion.

20 On the date of the incident, Plaintiff dropped his children off at school
 21 around 8:50 a.m. (ECF No. 34-1 at 7.) After dropping off his children, Plaintiff
 22 began driving home on Gilmore Avenue. (*Id.* at 7, 28, 29.)

23 Around 9:02 a.m., Officer Thompson witnessed Plaintiff do a U-turn in
 24 an active school zone and initiated a traffic stop. (*Id.* at 60.) Plaintiff turned left
 25 onto El Capitan Way and stopped his vehicle. (*Id.* at 8.)

26 The parties have different accounts of what happened next. According to
 27 Officer Thompson, he approached Plaintiff's vehicle with his thumb and index
 28 finger resting over the gun in his holster, as he was taught in safety training for

1 traffic stops at the academy. (*Id.* at 60.) According to Plaintiff, Officer
 2 Thompson did not place his hand over his gun until he felt threatened and
 3 called for backup because Plaintiff began arguing with him about the traffic
 4 infraction. (ECF No. 38 at 1.)

5 The interaction between the parties began with Officer Thompson telling
 6 Plaintiff that the reason for the stop was Plaintiff doing an illegal U-turn in a
 7 school zone. (ECF No. 34-1, Ex. B-2 at 00:43-00:50.) Plaintiff then told Officer
 8 Thompson that another driver made a left turn over double lines to turn into
 9 the school. (*Id.* at 00:51-01:29.) Plaintiff questioned Officer Thompson's
 10 understanding of traffic laws. (*Id.* at 00:54-1:04.)

11 During the argument, Officer Thompson called over his radio for another
 12 unit. (*Id.* at 1:05-1:08.) This is the point where Plaintiff says that Officer
 13 Thompson placed his hand on his gun. (ECF No. 38 at 1.)

14 Officer Thompson then asked for Plaintiff's license and registration and
 15 returned to his police vehicle to run Plaintiff's information. (ECF No. 34-1, Ex.
 16 B-2 at 1:28-02:22.) While Officer Thompson was running Plaintiff's
 17 information, Officer Christopher Chin ("Officer Chin") arrived on the scene,
 18 approximately six minutes after the traffic stop began. (*Id.* at 06:05.)

19 Officer Chin spoke to Plaintiff through the passenger side window and
 20 asked if Plaintiff was driving fast or if he made a U-turn, to which Plaintiff
 21 responded that he thought he made a U-turn. (ECF No. 34-1, Ex. B-3 at 00:59-
 22 01:05.) Plaintiff contends that this response was forced because he was afraid
 23 to disagree with Officer Thompson's version of events after Officer Thompson
 24 placed his hand on his weapon. (ECF No. 38 at 1; ECF No. 34-1 at 13.) Plaintiff
 25 did not say anything to Officer Chin about the stop being racially motivated.
 26 (ECF No. 34-1, Ex. B-3; ECF No. 34-1 at 12-13.)

27 Around 9:13 a.m., Officer Thompson was informed that Plaintiff's license
 28 was revoked. (ECF No. 34-1, Ex. B-2 at 11:17-11:28.) This turned out to be a

1 mistake; dispatch mixed up Plaintiff's commercial driver's license, which was
2 expired on the date of the incident, with his regular driver's license, which was
3 not expired on the date of the incident. (ECF No. 34-1 at 15-17, 26.) The entire
4 citation was ultimately voided due to the mistake. (*Id.* at 25-27.)

5 Officer Thompson returned to the Plaintiff's vehicle and told him that his
6 license was revoked and asked if there was anyone that could pick the car up
7 because Plaintiff could not drive it without a valid license. (ECF No. 34-1, Ex.
8 B-2 at 15:02-15:24.) Plaintiff said that he would call the registered owner of the
9 vehicle to pick it up. (*Id.* at 15:24-15:29.) Officer Thompson then explained that
10 Plaintiff was getting a citation for a revoked driver's license and for an illegal U-
11 turn before returning Plaintiff's information and handing him the citation. (*Id.*
12 at 15:29-15:42.) Officer Thompson told Plaintiff to wait outside the vehicle for
13 the registered owner to arrive. (*Id.* at 15:50-15:56.) Officer Thompson did not
14 impound the vehicle Plaintiff was driving because a licensed driver could move
15 it. (ECF No. 34-1 at 78.)

16 Around 9:18 a.m., Officer Thompson returned to his vehicle. (ECF No.
17 34-1, Ex. B-2 at 16:02-16:07.) Officer Chin also returned to his vehicle at this
18 time. (ECF No. 34-1, Ex. B-3 at 10:30-10:32.) In Officer Chin's bodycam, a
19 third officer is visible standing behind Officer Thompson's vehicle. (*Id.*) At this
20 point, both Officer Thompson and Officer Chin's bodycams stop recording.
21 According to them, after the traffic stop concluded, they spoke with Sergeant
22 Valdez, the third officer, for about five minutes about the traffic stop and other
23 issues before leaving the area. (ECF No. 34-1 at 60, 84.) Both officers claim
24 they did not speak to Plaintiff again after issuing the citation. (*Id.* at 60, 67, 68,
25 84.) GPS tracking data shows that Officer Thompson and Officer Chin left the
26 area around 9:23 a.m., five minutes after issuing the citation. (*Id.* at 51-56.)

27 Plaintiff's version of events after the citation was issued is different.
28 Plaintiff says that after Officer Thompson issued the citation, Officer Chin left

1 the scene, but Officer Thompson returned to Plaintiff's car where Plaintiff
 2 accused Officer Thompson of pulling him over because he was black. (ECF No.
 3 34-1 at 48-50.) Plaintiff says Officer Thompson got angry and told him to get
 4 out of the car and stand on the curb. (*Id.*) According to Plaintiff, Officer
 5 Thompson then sat in his vehicle and watched him until the registered owner
 6 of the vehicle arrived to make sure that he did not drive off. (*Id.*) Plaintiff also
 7 claims that testimony from the registered owner of the vehicle, Valerie
 8 Montoya, corroborates his version of events and confirms that Officer
 9 Thompson was at the scene of the incident watching Plaintiff when Ms.
 10 Montoya arrived. (ECF No. 38 at 3.) Ms. Montoya testified that she arrived at
 11 the scene about twenty-five minutes after Plaintiff called her. (ECF No. 39 at
 12 15-16.) This puts her estimated time of arrival well after the GPS tracking data
 13 says that Officer Thompson left. (ECF No. 34-1 at 51-56.)

14 Following these events, Plaintiff filed suit under 42 U.S.C. § 1983 against
 15 Officer Thompson and other Defendants. The operative complaint is Plaintiff's
 16 Second Amended Complaint. (ECF No. 11.) The Court dismissed all of Plaintiff's
 17 claims except for his claims under the First and Fourteenth Amendment
 18 against Officer Thompson. (ECF Nos. 14, 15.)

19 Defendant moved for summary judgment on Plaintiff's surviving claims.
 20 (ECF No. 7633.) Plaintiff responded (ECF No. 38), and Defendant replied (ECF
 21 No. 39).

22 **II. SUMMARY JUDGMENT STANDARD**

23 Summary judgment is appropriate if the movant shows "there is no
 24 genuine dispute as to any material fact and the movant is entitled to judgment
 25 as a matter of law." Fed. R. Civ. P. 56(a), (c). A fact is material if it "might affect
 26 the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine if "the evidence is such
 27 that a reasonable jury could return a verdict for the nonmoving party." *Id.*
 28

1 The party seeking summary judgment bears the initial burden of
 2 informing the Court of the basis for its motion and identifying those portions of
 3 the record that demonstrate the absence of a genuine issue of material fact.
 4 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then shifts to
 5 the non-moving party to set forth specific facts demonstrating there is a
 6 genuine issue of material fact for trial. *Fairbank v. Wunderman Cato Johnson*,
 7 212 F.3d 528, 531 (9th Cir. 2000); *Sonner v. Schwabe N. Am., Inc.*, 911 F.3d
 8 989, 992 (9th Cir. 2018) (“To defeat summary judgment, the nonmoving party
 9 must produce evidence of a genuine dispute of material fact that could satisfy
 10 its burden at trial.”). The Court views the evidence and reasonable inferences in
 11 the light most favorable to the non-moving party. *James River Ins. Co. v. Hebert*
 12 *Schenk, P.C.*, 523 F.3d 915, 920 (9th Cir. 2008).

13 **III. DISCUSSION**

14 Plaintiff’s claims against Officer Thompson rely on the First and
 15 Fourteenth Amendment. In his First Amendment claim, Plaintiff argues that
 16 Officer Thompson retaliated against him for engaging in constitutionally
 17 protected speech related to allegations of racial profiling. In his Fourteenth
 18 Amendment claim, Plaintiff argues that Officer Thompson engaged in selective
 19 enforcement of traffic laws and targeted Plaintiff because of his race.

20 Officer Thompson argues that he is entitled to qualified immunity on
 21 Plaintiff’s claims. Qualified immunity shields certain government officials from
 22 liability unless their conduct violates “clearly established statutory or
 23 constitutional rights of which a reasonable person would have known.” *Hope v.*
 24 *Pelzer*, 536 U.S. 730, 739 (2002) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800,
 25 818 (1982)). The United States Supreme Court has mandated a “two-step
 26 sequence” for resolving qualified immunity claims. *Pearson v. Callahan*, 555
 27 U.S. 223, 232 (2009). “First, a court must decide whether the facts that a
 28 plaintiff has . . . shown . . . make out a violation of a constitutional right.

1 Second, if the plaintiff has satisfied this first step, the court must decide
 2 whether the right at issue was clearly established at the time of defendant's
 3 alleged misconduct." *Id.* (citations and internal quotation marks omitted).

4 Using this two-step framework, the Court will address each of Plaintiff's
 5 claims in turn.

6 **A. Plaintiff's First Amendment Claim**

7 To show a violation of a constitutional right based on a First Amendment
 8 retaliation theory, a plaintiff must show: (1) that the plaintiff was engaged in
 9 constitutionally protected activity; (2) that the defendant's actions caused the
 10 plaintiff to suffer an injury that would chill a person of ordinary firmness from
 11 continuing to engage in that activity; and (3) that the defendant's adverse
 12 action was substantially motivated as a response to the plaintiff's exercise of
 13 constitutionally protected conduct. *Capp v. Cnty. of San Diego*, 940 F.3d 1046,
 14 1053 (9th Cir. 2019) (holding that the plaintiff stated a claim for First
 15 Amendment retaliation through the actions of social workers employed by a
 16 county Health and Human Services Agency). The mere threat of harm can be
 17 an adverse action. *Brodheim v. Cry*, 584 F.3d 1262, 1269–70 (9th Cir. 2009)
 18 (collecting cases).

19 Plaintiff points to a variety of actions Officer Thompson allegedly took in
 20 retaliation for statements Plaintiff made that were critical of Officer Thompson's
 21 policing and that alleged racial profiling. Plaintiff argues that Officer
 22 Thompson's threatening placement of his hand on his gun, the issuance of the
 23 citation itself, and the decision to watch Plaintiff while Plaintiff stood outside
 24 his car and waited for the registered owner to arrive were all impermissible
 25 retaliatory actions.

26 To survive summary judgment, Plaintiff must first show that his
 27 statements are constitutionally protected speech. "[T]he First Amendment
 28 protects a significant amount of verbal criticism and challenge directed at

1 police officers.” *City of Houston v. Hill*, 482 U.S. 451, 461 (1987). “The freedom
2 of individuals to oppose or challenge police action verbally without thereby
3 risking arrest is one important characteristic by which we distinguish ourselves
4 from a police state.” *Duran v. City of Douglas*, 904 F.2d 1372, 1378 (9th Cir.
5 1990).

6 Here, viewing the evidence in the light most favorable to Plaintiff, there
7 are two instances where Plaintiff engaged in protected speech. The first is
8 captured on Officer Thompson’s bodycam footage when Plaintiff questioned
9 Officer Thompson’s understanding of traffic laws and asked Officer Thompson
10 if he saw others violating traffic laws. This sort of verbal challenge to police
11 action is protected by the First Amendment from retaliatory action by police.

12 The second allegedly took place after the bodycams stopped recording.
13 Five minutes of time, beginning when the bodycam footage cuts off and ending
14 when the GPS tracking data shows that all officers left the area, are
15 unaccounted for. Officers Thompson and Chin provided sworn declarations
16 stating they had no further interaction with Plaintiff after Officer Thompson
17 issued the citation. Plaintiff testified that after the citation was issued, he had
18 an additional conversation with Officer Thompson where he raised issues of
19 racial profiling. Plaintiff says that Officer Thompson got angry, told Plaintiff to
20 get out of his vehicle, and then watched Plaintiff to make sure he did not drive
21 off. The conflicting testimony creates a triable issue of fact as to what happened
22 during the five minutes between the end of the bodycam footage and the
23 officers leaving the area. Plaintiff’s version of events, if true, shows that he
24 engaged in constitutionally protected speech.

25 The second element of Plaintiff’s claim requires him to show Officer
26 Thompson’s actions would “chill a person of ordinary firmness” from
27 continuing to exercise their First Amendment rights. *Capp*, 940 F.3d at 1053.
28 The Ninth Circuit has held that a retaliatory arrest, a retaliatory search and

1 seizure, and informal measures such as an investigation can chill First
 2 Amendment activities. *Ford v. City of Yakima*, 706 F.3d 1188, 1193–94 (9th Cir.
 3 2013), *abrogated on other grounds by Nieves v. Bartlett*, 587 U.S. 391 (2019).
 4 The citation and the alleged seizure following the citation both satisfy the
 5 second element of Plaintiff’s claim. As outlined above, the Court find triable
 6 issues of fact on whether the alleged seizure following the issuance of the
 7 citation took place.

8 The allegation that Officer Thompson placed his hand on his gun after
 9 Plaintiff was critical of his policing also satisfies the second element. A rational
 10 jury could find that a person of ordinary firmness would be chilled from
 11 engaging in future protected speech by such a show of force from a police
 12 officer. The conflicting testimony from Plaintiff and Officer Thompson about
 13 when Officer Thompson placed his hand on his gun creates a triable issue on
 14 whether Officer Thompson placed his hand on his gun in retaliation for
 15 Plaintiff’s statements about his policing. Plaintiff has therefore satisfied the
 16 second element of his claim.

17 Finally, Plaintiff must show “there was a substantial causal relationship
 18 between the constitutionally protected activity and the adverse action.”
 19 *Ballentine v. Tucker*, 28 F.4th 54, 61 (9th Cir. 2022) (quoting *Blair v. Bethel*
 20 *Sch. Dist.*, 608 F.3d 540, 543 (9th Cir. 2010)). “[P]laintiffs bringing ‘First
 21 Amendment retaliatory arrest claims’ must generally ‘plead and prove the
 22 absence of probable cause,’ because the presence of probable cause generally
 23 ‘speaks to the objective reasonableness of an arrest’ and suggests that the
 24 ‘officer’s animus’ is not what caused the arrest.” *Ballentine*, 28 F.4th at 62
 25 (quoting *Nieves*, 587 U.S. at 401–02).¹ While Plaintiff was not arrested here, the

26 ¹ In *Nieves*, the United States Supreme Court identified an exception to its requirement for
 27 plaintiffs to plead and prove the absence of probable cause in retaliatory arrest claims. “[A]
 28 narrow qualification is warranted for circumstances where officers have probable cause to
 make arrests, but typically exercise their discretion not to do so.” *Nieves*, 587 U.S. at 406.
 “[T]he no-probable-cause requirement should not apply when a plaintiff presents objective
 evidence that he was arrested when otherwise similarly situated individuals not engaged in the

1 citation and the alleged seizure following the citation both involve probable
 2 cause, so the presence or absence of probable cause is probative in
 3 determining if Officer Thompson's animus caused the chilling actions.

4 Because Officer Thompson had probable cause supporting the traffic the
 5 citation, it cannot be the basis for a First Amendment retaliation claim. No
 6 party disputes that Plaintiff violated a traffic law when he did a U-turn in a
 7 school zone. Thus, Officer Thompson's citation was objectively reasonable and
 8 not caused by any undue animus for Plaintiff. Similarly, the alleged seizure
 9 that took place after Officer Thompson issued the citation was also objectively
 10 reasonable. At the time, Officer Thompson reasonably believed that Plaintiff
 11 was not licensed to drive, so it would be unlawful for Officer Thompson to let
 12 Plaintiff drive away. Even taking the events as alleged by Plaintiff, it was
 13 objectively reasonable for Officer Thompson to take steps to prevent Plaintiff
 14 from driving. Thus, the alleged seizure also cannot be the basis for a First
 15 Amendment retaliation claim.

16 This leaves only Plaintiff's claim that Officer Thompson put his hand on
 17 his gun in response to Plaintiff's statements questioning his policing. But the
 18 objective evidence does not support Plaintiff's version of events. While it is
 19 unclear from the video when Officer Thompson places his hand on his gun, the
 20 conversation between the parties is civil and conversational. At no point in the
 21 bodycam footage does Officer Thompson become audibly angry. He remains
 22 calm throughout. The objective evidence, along with Officer Thompson's
 23 declaration stating that he was taught in safety training at the academy to
 24 place his hand on his gun during traffic stops, support a finding that Officer
 25 Thompson's placement of his hand on his gun was not done because of any
 26 animus toward Plaintiff. Even if he placed his hand on his gun after Plaintiff

27
 28 same sort of protected speech had not been." *Id.* at 407. Because Plaintiff has not presented
 any such objective evidence that similarly situated individuals were not ticketed or seized for
 his traffic violations, the Court finds that this exception does not apply.

1 questioned his policing, the evidence supports a finding that Officer Thompson
 2 placed his hand on his gun for a legitimate, safety-related reason. This
 3 therefore cannot be the basis for Plaintiff's First Amendment retaliation claim.

4 Because Plaintiff has failed to put forth sufficient evidence of causation
 5 to survive summary judgment, the Court finds no constitutional violation by
 6 Officer Thompson. The Court therefore finds that Officer Thompson is entitled
 7 to qualified immunity for all alleged retaliatory action. Plaintiff's First
 8 Amendment retaliation claim therefore fails.

9 **B. Plaintiff's Fourteenth Amendment Claim**

10 A claim under 42 U.S.C. § 1983 for violation of the Equal Protection
 11 Clause of the Fourteenth Amendment must show "that the defendants acted
 12 with an intent or purpose to discriminate against the plaintiff based upon
 13 membership in a protected class." *Lee v. City of Los Angeles*, 250 F.3d 668, 686
 14 (9th Cir. 2001). To survive summary judgment on his Equal Protection claim,
 15 Plaintiff must "produce evidence sufficient to permit a reasonable trier of fact
 16 to find by a preponderance of the evidence that [the] decision . . . was racially
 17 motivated." *Keyser v. Sacramento City Unified Sch. Dist.*, 265 F.3d 741, 754
 18 (9th Cir. 2001) (quoting *FDIC v. Henderson*, 940 F.2d 465, 473 (9th Cir. 1991)).
 19 The existence of probable cause for a citation is highly probative on the issue of
 20 discriminatory intent. *Dietrich v. John Ascuaga's Nugget*, 548 F.3d 892, 901
 21 (9th Cir. 2008).

22 Plaintiff has failed to marshal any evidence of an intent to discriminate
 23 by Officer Thompson. Plaintiff's subjective beliefs are not sufficient to create a
 24 triable issue of fact for a jury. Given the fact that Plaintiff's U-turn in a school
 25 zone violated traffic laws, Officer Thompson had probable cause to issue the
 26 citation. Because there is no evidence of any discriminatory motivation or
 27 intent behind the citation, Plaintiff has failed to show that Officer Thompson's
 28 actions violated his constitutional rights. Officer Thompson is therefore entitled

1 to qualified immunity for his action, and Plaintiff's Fourteenth Amendment
2 claim fails.

3 **IV. CONCLUSION**

4 IT IS THEREFORE ORDERED that Defendant's Motion for Summary
5 Judgment (ECF No. 33) is GRANTED.

6 The Clerk of the Court is directed to enter judgment accordingly.

7 DATED THIS 21st day of June 2024.

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10 ANNE R. TRAUM
11 UNITED STATES DISTRICT JUDGE
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